COLORADO SUPREME COURT STANDING COMMITTEE ON THE COLORADO RULES OF PROFESSIONAL CONDUCT

AGENDA

November 21, 2025, noon
Via Webex only

Webex link:
https://judicial.webex.com/judicial/j.php?MTID=m75465c39d2badd01c3421fd0aad0198e

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1. Call to Order [Judge Lipinsky].

2. Approval of minutes for September 26, 2025, meeting [attachment 1].

3. Old business: Discussion of possible amendments to Rule 1.5 in light of the enactment of HB 25-1090 [Jessica Yates] [attachment 2].

4. Adjournment.

Upcoming meeting dates: January 23, 2026; April 24, 2026; July 24, 2026; and September 25, 2026.

Judge Lino Lipinsky, Chair
Colorado Court of Appeals
lino.lipinsky@judicial.state.co.us

Attachment 1

COLORADO SUPREME COURT

RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE

Approved Minutes of Meeting of the Full Committee
On
September 26, 2025
Seventy-Seventh Meeting of the Full Committee

The seventy-seventh meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:03 a.m. on Friday, September 26, 2025, by Chair Judge Lino Lipinsky de Orlov. Judge Lipinsky initially took attendance.

Present at the meeting in person were Judge Lipinsky (Chair), Katayoun Donnelly, Justice William Hood, Judge Bryon Large, Lois Lupica, Marianne Luu-Chen, Stephen Masciocchi, Cecil Morris, Troy R. Rackham, James Sudler, J.J. Wallace, and Jessica Yates.

Present for the meeting by virtual appearance were Judge Adam Espinosa, Margaret Funk, Noah Patterson, Dick Reeve, Alec Rothrock, Marcus Squarrell, Robert Steinmetz, Eli Wald, and Fred Yarger.

Committee members with excused absences were Nancy Cohen, Cynthia Covell, Thomas Downey, Scott Evans, Marcy Glenn, April Jones, Matthew Kirsch, Julia Martinez, David Stark, and Judge John Webb. Justice Maria Berkenkotter also had an excused absence.

1. CALL TO ORDER. Judge Lipinsky called the meeting to order at 9:04 a.m. He welcomed the members in attendance and virtually.

2. ANNOUNCEMENTS. Chair Lipinsky noted that Jason Lynch resigned from the Committee because he accepted a new position in Massachusetts. Chair Lipinsky thanked Mr. Lynch for his service.

Chair Lipinsky also reported that Committee member Erika Holmes died on August 1. He noted her numerous contributions to the profession, including her work on the Committee, leadership role in proposing the recent amendments on limited representation, and service as Chair of the Colorado Bar Association Ethics Committee. A celebration of Erika's life is scheduled for City Park on October 8, 2025, at 5 p.m. The Committee had a moment of silence to honor her memory.

3. APPROVAL OF MINUTES FOR JULY 25, 2025, MEETING. A member moved to approve the minutes, which another member seconded. A vote was taken on the motion to approve minutes. The motion passed unanimously.

4. OLD BUSINESS.

a. Report on the Committee's Recommendations for AI-Related Amendments to the Rules. Judge Lipinsky reported that the Supreme Court set a public hearing on the proposed AI-related amendments to the Rules for December 17, 2025, at 3:30 p.m. The deadline to provide written comments on the proposed amendments is December 1, 2025, at 4:00 p.m. The deadline to submit a request to speak at the public hearing is December 5, 2025, at 4:00 p.m. If any member of the Committee wishes to speak at the public hearing, the member needs to submit a request by the deadline.

b. Legal Technology Advisory Committee. Judge Lipinsky said that the Supreme Court had agreed with the Committee's recommendation for creation of a new Legal Technology Advisory Committee. In a September 15, 2025, press release, Chief Justice Márquez said the Advisory Committee was "designed to guide attorneys, licensed legal paraprofessionals, other legal professionals, judicial officers, and members of the public on the appropriate use of generative artificial intelligence (AI) and other advanced technologies and their impact on the practice of law, professional ethics, and the judiciary." She announced that the Advisory Committee will be comprised of twelve appointed members, including "judicial officers, clerks of court, legal practitioners, and subject matter experts, whom the Chief Justice will appoint" and will develop "guidance materials that focus on safeguarding the integrity of the legal system, supporting access to justice, protecting client confidentiality, encouraging innovation, and ensuring competent client service." The Chief Judge charged the Advisory Committee with submitting its initial recommendations to her by October 1, 2026.

c. Report from the Rule 1.2 Subcommittee. Judge Lipinsky presented in the absence of Judge Espinosa, who was called away to cover a hearing. Judge Lipinsky discussed the proposed amendments to Rule 1.2(c) and comments to the Rule, as shown in attachment 3 to the meeting materials. A member commented that he agreed with the proposed amendments but was interested in OARC's position on them. Ms. Yates provided the perspective of OARC and said she supports the proposed amendments. A member asked about the genesis of the proposal. Judge Lipinsky explained that the Standing Committee formed the subcommittee to consider whether amendments to Rule 1.2(c) and comments to Rule 1.2 were necessary and appropriate in light of the recent limited representation amendments to C.A.R. 5(e), C.R.C.P. 11(b), and C.R.C.P. 311(b). A motion was made to approve the proposed amendments. The motion was seconded. Judge Large abstained. The motion passed with a unanimous vote of all members who were present and participated.

d. Report from the Rule 6.5 Subcommittee. Jessica Yates presented on the issue. The subcommittee is obtaining comments on possible amendments to Rule 6.5 from stakeholders of legal services organizations and operators of legal clinics. Ms. Yates explained that the subcommittee has researched the practices and procedures of the state's legal clinics for obtaining informed consent from participants, and she noted there are nuanced differences between those policies and procedures. Ms. Yates said she anticipated that the subcommittee will present proposed amendments to Rule 6.5 at the Committee's January 2026 meeting.

e. **Update on 2023 Amendments to ABA Model Rule 1.16**. Steve Masciocchi presented on the jurisdictions that have considered the ABA's amendments to Model Rule 1.16. (He provides the Committee with regular updates on the topic.) He reported that Arizona, North Dakota, and Wyoming adopted the amended Rule and comments; Maryland adopted the amended Rule and comments except for the second sentence of comment 2; and Oregon adopted the amended Rule but not the comments. Florida and Massachusetts adopted the amended Rule with revisions, while California, Idaho, and Utah rejected it. Alaska, D.C., Indiana, New York, and Washington are considering the amended Rule. Mr. Masciocchi added that ABA Formal Opinion 513 provides an interpretation of the Rule.

Ms. Yates said that, from the Office of Attorney Regulation Counsel's (OARC) perspective, a wait-and-see approach to the amendments was prudent. She noted that OARC often hears from members of the public who express concern and skepticism about lawyers and that the public may question why a state rejected a Model Rule that addresses lawyers' duty to detect and avoid involvement in a client's criminal or fraudulent conduct.

The Committee agreed to take no action on the proposed amendments to Rule 1.16 at this time.

5. **NEW BUSINESS.**

Discussion of Possible Amendments to Rule 1.5 in Light of the Enactment of HB 25-1090. Ms. Yates discussed the impact of HB 25-1090, a copy of which is in the meeting materials, on Colorado lawyers. Although the General Assembly enacted the bill primarily to address landlord-tenant issues, its scope is much broader. For example, the bill includes new section 6-1-737(2)(a), which provides that:

> A person shall not offer, display, or advertise an amount a person may pay for a good, service, or property unless the person offering, displaying, or advertising the good, service, or property clearly and conspicuously discloses the total price for the good, service, or property as a single number without separating the total price into separate fees, charges, or amounts. The total price for the good, service, or property must be disclosed more prominently than any other pricing information for the good, service, or property.

As relevant to lawyers, section 6-1-737(2)(b) establishes a safe harbor that says a person is compliant with subsection (2)(a) if the person "does not use deceptive, unfair, and unconscionable acts or practices related to the pricing of goods, services, or property" *if* "the person is offering services for which the total price of the service cannot reasonably be known at the time of the offer due to factors that determine the total price that are beyond the control of the person offering the service" *and* the person "clearly and conspicuously discloses . . . (A) the factors that that determine the total price"; (B) "any mandatory fees associated with the transaction"; and (C) "that the total price of the services may vary."

Language in Rule 1.5 indicates that use of the form representation agreements included in the Rules are sufficient. In light of the enactment of HB 25-1090, however, a lawyer could, in theory, fully comply with Rule 1.5 but nonetheless violate the statute. Accordingly, Ms. Yates suggested that the Committee consider amendments to Rule 1.5 to avoid conflicts between the Rule and HB 25-1090. Ms. Yates suggested forming a subcommittee for this purpose.

She explained the history of the bill and explained that it did not get the Colorado Bar Association's attention until it had passed. There may be proposals during the next legislative session to exempt certain industries or professions, but it would be speculative at this time to attempt to predict whether legislators would propose such exemptions and whether they would be adopted.

A member noted that the ABA amended Model Rule 1.13 following Congress's adoption of the Sarbanes-Oxley Act to conform the Model Rule to the Act. The member suggested the possibility of obtaining guidance as to whether the Supreme Court would like the Committee to proposed amendments to Rule 1.5 to conform the Rule to HB 25-1090. The member noted that, if the Supreme Court decided that the bill interfered with the Supreme Court's exclusive jurisdiction to regulate the practice of law, it would not be necessary to consider amendments to Rule 1.5 based on the bill.

Justice Hood commented that, without speaking for the full Court, the Court is unlikely to draw a hard line on the scope of HB 25-1090 based on separation of powers principles and would likely welcome proposed amendments to the Rules.

A member urged the formation of a subcommittee to consider the issue. The member suggested that it would be helpful to provide the Court with proposed Rule amendments or, if the Committee does not propose amendments, a memorandum explaining why it concluded that no Rule amendments were warranted to address HB 25-1090.

A member expressed concerns about the timing of the subcommittee's work because the bill will become effective in January 2026. The member questioned whether a subcommittee could complete its work and submit a presentation to the Committee in sufficient time before the bill's effective date. Chair Lipinsky noted that the Committee could schedule a special meeting, if necessary.

Chair Lipinsky suggested forming a subcommittee to provide a report to the Committee by the end of October. He would then convene a special meeting of the Committee to consider the subcommittee's report and recommendations. Chair Lipinsky asked for volunteers to serve on the subcommittee. Ms. Yates agreed to chair the subcommittee. The members of the subcommittee will be Margaret Funk, Marianne Luu-Chen, Stephen Masciocchi, Cecil Morris, Dick Reeve, Marcus Squarrell, Robert Steinmetz, James Sudler, and Eli Wald. (Alec Rothrock also volunteered to serve on the subcommittee.)

b. Report on the CBA's AI Task Force. Judge Lipinsky informed the Committee that the CBA formed a task force to consider lawyer use of AI. The task force's goals include developing guidelines for lawyer use of AI; drafting technology-related amendments to the Rules, including possible amendments to Rules 1.1, 5.3, and 5.4; recommending expansion of the LLP program; and considering Rule amendments to allow nonlawyer ownership of firms and revenue-sharing with nonlawyers. The task force will form working groups in October. Those working groups will make recommendations in November. The task force will then present those recommendations to the Executive Council of the Colorado Bar Association in December. The Committee members said they look forward to learning more about the task force.

5. ADJOURNMENT. A motion was made to adjourn at 10:07 a.m. The motion was seconded. The motion carried.

Respectfully submitted,

Troy R. Rackham, Secretary

Attachment 2

lipinsky, lino

From:	Jessica Yates <j.yates@csc.state.co.us>
Sent:	Friday, October 10, 2025 2:56 PM
To:	lipinsky, lino
Cc:	Cecil E. Morris; Marianne Luu-Chen; Margaret Funk; Stephen G. Masciocchi; DReeve; Marcus Squarrell; Rob Steinmetz; jamessudler@hotmail.com; Eli Wald; arothrock@childsmccune.com; Kim Pask
Subject:	[EXTERNAL] RE: Subcommittee re: Colo. RPC 1.5 and HB25-1090
Attachments:	HB25-1090 and Colo RPC 1.5 subcommittee proposal.docx

Judge Lipinsky,

I am writing on behalf of the subcommittee tasked with reviewing Colo. RPC 1.5 in light of HB25-1090. Most members were able to meet today, October 10, 2025, after a straw poll of ideas had been circulated to focus the subcommittee's work. We understand the objective of completing the work of the subcommittee quickly to allow for the possibility of a fall meeting of the full Standing Committee, at which time that Committee could vote on a proposal that the Supreme Court might adopt prior to the January 1, 2026 effective date of HB25-1090.

Today's attendees were:
Margaret Funk
Steve Masciocchi
Cecil Morris
Alec Rothrock
Marcus Squarrell
Rob Steinmetz
Jamie Sudler
Jessica Yates

The subcommittee is proposing a change to Colo. RPC 1.5(h)(3) to state that use of the form flat fee agreement is sufficient for compliance with Rule 1.5(h), with that limitation designed to avoid suggesting that use of the form agreement might be sufficient for all purposes. The subcommittee modeled that change on similar language currently found in Colo. RPC 1.5(c)(7) regarding the sufficiency of the use of the form contingent fee agreement.

The subcommittee also is proposing, within the Comments, a new subhead and a new comment [3] (comment [3] currently is "repealed") to inform lawyers that other law may apply, citing the C.R.S. reference found in HB25-1090. This approach is modeled after the statutory references in comment [6] pertaining to statutory limits on contingent fees.

I have attached the word document with redlines.

While we were unable to schedule this meeting at a time when everyone could attend, I believe this proposal is generally consistent with feedback received from the straw poll. (All subcommittee members are cc'd here, and if I have missed the mark in reviewing this feedback, someone please let me know.)

The subcommittee discussed whether substantive changes should be made to Rule 1.5's form fee agreements to ensure compliance with HB25-1090. There was a general recognition of the desirability of having fully compliant form fee agreements available to the legal community. However, the subcommittee also recognized that there was no consensus in the legal community at this time regarding what fee agreement language would comply with HB25-1090.

Please let me know if you have any questions or need anything else from us to tender this matter to the full Committee.

Jessica Yates, 303-928-7780

Rules of Prof.Cond., Rule 1.5

Rule 1.5. Fees

Currentness

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) Before or within a reasonable time after commencing the representation, the lawyer shall communicate to the client in writing:

(1) the basis or rate of the fee and expenses for which the client will be responsible, except when the lawyer will continue to charge a regularly represented client on the same basis or rate; and

(2) the scope of the representation, except when the lawyer will perform services that are of the same general kind as previously rendered to a regularly represented client.

The lawyer shall communicate promptly to the client in writing any changes in the basis or rate of the fee or expenses.

(c) A “contingent fee” is a fee for legal services under which compensation is to be contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the representation.

(1) The terms of a contingent fee agreement shall be communicated in writing before or within a reasonable time after commencing the representation and shall include the following information:

(i) The names of the lawyer and the client;

(ii) A statement of the nature of the claim, controversy or other matters with reference to which the services are to be performed, including each event triggering the lawyer's right to compensation;

(iii) The method by which the fee is to be determined, including the percentage or amounts that will accrue to the lawyer in the event of settlement, trial or appeal, or other final disposition, and whether the contingent fee will be determined before or after the deduction of (A) costs and expenses advanced by the lawyer or otherwise incurred by the client, and (B) other amounts owed by the client and payable from amounts recovered;

(iv) A statement of the circumstances under which the lawyer may be entitled to compensation if the lawyer's representation concludes, by discharge, withdrawal or otherwise, before the occurrence of an event that triggers the lawyer's right to a contingent fee;

(v) A statement regarding expenses, including (A) an estimate of the expenses to be incurred, (B) whether the lawyer is authorized to advance funds for litigation-related expenses to be reimbursed to the lawyer from the recovery, and, if so, the amount of expenses the lawyer may advance without further approval, and (C) the client's obligation, if any, to pay expenses if there is no recovery;

(vi) A statement regarding the possibility that a court will award costs or attorney fees against the client;

(vii) A statement regarding the possibility that a court will award costs or attorney fees in favor of the client, and, if so, how any such costs or attorney fees will be accounted for and handled;

(viii) A statement informing the client that if the lawyer wishes to hire a lawyer in another firm to assist in the handling of a matter (“associated counsel”), the lawyer will promptly inform the client in writing of the identity of the associated counsel, and that (A) the hiring of associated counsel will not increase the contingent fee, unless the client otherwise agrees in writing, and (B) the client has the right to disapprove the hiring of associated counsel and, if hired, to terminate the employment of associated counsel; and

(ix) A statement that other persons or entities may have a right to be paid from amounts recovered on the client's behalf, for example when an insurer or a federal or state agency has paid money or benefits on behalf of a client in connection with the subject of the representation.

(2) A contingent fee agreement must be signed by the client and the lawyer.

(3) The lawyer shall retain a copy of the contingent fee agreement for seven years after the final resolution of the case, or the termination of the lawyer's services, whichever first occurs.

(4) No contingent fee agreement may be made

(i) for representing a defendant in a criminal case,

(ii) in a domestic relations matter, where payment is contingent on the securing of a divorce or upon the amount of maintenance or child support, or property settlement in lieu of such amounts, or

(iii) in connection with any case or proceeding where a contingency method of a determination of attorney fees is otherwise prohibited by law.

(5) Upon conclusion of a contingent fee matter, the lawyer shall provide the client a written disbursement statement showing the amount or amounts received, an itemization of costs and expenses incurred in handling of the matter, sums to be disbursed to third parties, including lawyers in other law firms, and computation of the contingent fee.

(6) No contingent fee agreement shall be enforceable unless the lawyer has substantially complied with all of the provisions of this Rule.

(7) The form Contingent Fee Agreement following the comment to this Rule may be used for contingent fee agreements and shall be sufficient to comply with paragraph (c)(1) of this Rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule. Nothing in this Rule prevents a lawyer from entering into an agreement that provides for a contingent fee combined with one or more other types of fees, such as hourly or flat fees, provided that the agreement complies with this Rule insofar as the contingent fee is concerned.

(d) Other than in connection with the sale of a law practice pursuant to Rule 1.17, a division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the basis upon which the division of fees shall be made, and the client's agreement is confirmed in writing; and

(3) the total fee is reasonable.

(e) Referral fees are prohibited.

(f) Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15B(a)(1) until earned. If advances of unearned fees are in the form of property other than funds, then the lawyer shall hold such property separate from the lawyer's own property pursuant to Rule 1.15A(a).

(g) Nonrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited.

(h) A "flat fee" is a fee for specified legal services for which the client agrees to pay a fixed amount, regardless of the time or effort involved.

(1) The terms of a flat fee shall be communicated in writing before or within a reasonable time after commencing the representation and shall include the following information:

(i) A description of the services the lawyer agrees to perform;

(ii) The amount to be paid to the lawyer and the timing of payment for the services to be performed;

(iii) If any portion of the flat fee is to be earned by the lawyer before conclusion of the representation, the amount to be earned upon the completion of specified tasks or the occurrence of specified events; and

(iv) The amount or the method of calculating the fees the lawyer earns, if any, should the representation terminate before completion of the specified tasks or the occurrence of specified events.

(2) If all or any portion of a flat fee is paid in advance of being earned and a dispute arises about whether the lawyer has earned all or part of the flat fee, the lawyer shall comply with Rule 1.15A(c) with respect to any portion of the flat fee that is in dispute.

(3) The form Flat Fee Agreement following the comment to this Rule may be used for flat fee agreements and shall be sufficient to comply with paragraph (h) of this Rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule.

Credits

Repealed and readopted April 12, 2007, effective January 1, 2008. Amended March 10, 2011, effective July 1, 2011. Amended effective April 6, 2016; January 31, 2019. Amended October 1, 2020, effective January 1, 2021; September 9, 2021, effective January 1, 2022.

Editors' Notes

COMMENT

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] In a new client-lawyer relationship, the scope of the representation and the basis or rate of the fee and expenses must be promptly communicated in writing to the client, but the communication need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. It is not necessary to recite all the factors that underlie the basis or rate of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be taken into account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule. Similarly, it is not necessary to recite all the anticipated services that comprise, or the exclusions from, the scope of representation, so long as the communication accurately conveys the agreement with the client.

When a lawyer has regularly represented a client and the lawyer will continue to charge the client on the same basis or rate, the lawyer is not required to communicate the basis or rate of the fee and expenses. In such circumstances, the lawyer and client ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible.

When a lawyer will perform services for a regularly represented client that are of the same general kind as previously rendered, the lawyer is not required to communicate the scope of the new representation. Whether services are of "the same general kind as previously rendered" depends on consideration of the totality of the circumstances surrounding the services previously rendered and those that will be rendered. Circumstances that may be relevant include, but are not limited to, the type of the services rendered (e.g., litigation or transactional), the subject matter of the services rendered (e.g., breach of contract or patent infringement), and the sophistication of the client.

Whether the client-lawyer relationship is new or one where the lawyer has regularly represented the client, any changes in the basis or rate of the fee or expenses must be communicated in writing. Changes in the scope of the representation may occur frequently over the course of the representation and are not required to be communicated in writing; however, other rules of professional conduct may require additional communications and communicating such changes in writing may help avoid misunderstandings between clients and lawyers. When other developments occur during the representation that render an earlier communication substantially inaccurate or inadequate, a subsequent written communication may help avoid misunderstandings between clients and lawyers.

Relationship to Other Law

[3] ~~Repealed.~~A lawyer offering services, including an offer of services through a fee agreement, may be required to comply with other law pertaining to the offer of services. *E.g.,* C.R.S. § 6-1-737 (addressing requirements to disclose certain pricing information).

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Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] A fee agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Contingent Fees

[6] Contingent fees, whether based on the recovery or savings of money, or on a nonmonetary outcome, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. *E.g.,* 28 U.S.C. § 2678 (limiting percentage of fees in Federal Tort Claims Act cases); C.R.S. § 8-43-403 (limiting percentage of contingent fee in certain worker's compensation cases). The prohibition on contingent fees in certain domestic relations matters does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, maintenance or other financial orders because such contracts do not implicate the same policy concerns.

[6A] The scope of representation in a contingent fee agreement should reflect whether the representation includes the handling of counterclaims, third-party claims to amounts recovered, and appeals.

[6B] A lawyer may include a provision in a contingent fee agreement setting forth the lawyer's agreement to reimburse the client for any attorney fees and costs awarded against the client. A provision in a contingent fee agreement in which the client must reimburse the lawyer for any attorney fees or costs awarded against the lawyer may be improper.

[6C] Nothing in this Rule prohibits a lawyer from arranging, in the contingent fee agreement or otherwise, for a third party to guarantee some or all of the financial obligations of the client in the contingent fee agreement.

[6D] Third parties often hold claims to amounts recovered by the lawyer on behalf of the client. The lawyer may be required, as a matter of professional ethics, to pay these amounts from the proceeds of a recovery and not to disburse them to the client.

[6E] A tribunal may award attorney fees to the client under a fee-shifting provision of a contract or statute or as a sanction for discovery violations or other litigation misconduct. The fee agreement may provide for a different allocation of such an award of fees as between the client and the lawyer depending on the circumstances giving rise to the award, such as whether the fees are awarded as a sanction for improper conduct that necessitated additional effort by the lawyer, or whether the fees are awarded under a contractual or statutory fee-shifting provision. This rule does not limit the ways in which clients and lawyers may contract to allocate awards of attorney fees; however, the lawyer must comply with the reasonableness standard of paragraph (a) of this Rule.

[6F] A conversion clause is a provision in a contingent fee agreement that notifies clients they may be liable for attorney fees in quantum meruit or on another alternate basis if the contingent fee agreement is terminated before the occurrence of the contingency. See, form Contingent Fee Agreement, ¶ (4). A conversion clause that requires payment of the alternate fee immediately upon termination, and regardless of the occurrence of the contingency, would discourage most clients from discharging their lawyer. Few clients have the financial means to pay a contingent fee from their own resources, with no guarantee of replenishment by a recovery from a third party. Therefore, a conversion clause that requires payment of the alternate fee immediately upon termination may be appropriate only if (a) the client is sophisticated in legal matters, has the means to pay the fee regardless of the occurrence of the contingency, and has specifically negotiated the conversion clause; and (b) the contingent fee agreement expressly requires payment of the alternate fee immediately upon termination.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (d) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (d) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Advances of Unearned Fees and Engagement Retainer Fees

[10] The analysis of when a lawyer may treat advances of unearned fees as property of the lawyer must begin with the principle that the lawyer must hold in trust all fees paid by the client until there is a basis on which to conclude that the lawyer has earned the fee; otherwise the funds must remain in the lawyer's trust account because they are not the lawyer's property.

[11] To make a determination of when an advance fee is earned, the written statement of the basis or rate of the fee, when required by Rule 1.5(b) or (h), should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned. Whether a lawyer has

conferred a sufficient benefit to earn a portion of the advance fee will depend on the circumstances of the particular case. The circumstances under which a fee is earned should be evaluated under an objective standard of reasonableness. Rule 1.5(a).

[12] Advances of unearned fees, including advances of all or a portion of a flat fee, are those funds the client pays for specified legal services that the lawyer has agreed to perform in the future. Pursuant to Rule 1.5(f), the lawyer must deposit an advance of unearned fees in the lawyer's trust account. The funds may be earned only as the lawyer performs specified legal services or confers benefits on the client as provided for in the written statement of the basis of the fee, if a written statement is required by Rule 1.5(b). See also Restatement (Third) of the Law Governing Lawyers §§ 34, 38 (1998). Rule 1.5(f) does not prevent a lawyer from entering into these types of arrangements.

[13] For example, the lawyer and client may agree that portions of the advance of unearned fees are deemed earned at the lawyer's hourly rate and become the lawyer's property as and when the lawyer provides legal services.

[14] A lawyer and client may agree that a flat fee or a portion of a flat fee is earned in various ways. For example, the lawyer and client may agree to an advance flat fee that will be earned in whole or in part based upon the lawyer's completion of specific tasks or the occurrence of specific events, regardless of the precise amount of the lawyer's time involved. For instance, in a criminal defense matter, a lawyer and client may agree that the lawyer earns portions of the flat fee upon the lawyer's entry of appearance, initial advisement, review of discovery, preliminary hearing, pretrial conference, disposition hearing, motions hearing, trial, and sentencing. Similarly, in a trusts and estates matter, a lawyer and client may agree that the lawyer earns portions of the flat fee upon client consultation, legal research, completing the initial draft of testamentary documents, further client consultation, and completing the final documents.

[15] The portions of the advance flat fee earned as each such event occurs need not be in equal amounts. However, the fees attributed to each event should reflect a reasonable estimate of the proportionate value of the legal services the lawyer provides in completing each designated event to the anticipated legal services to be provided on the entire matter. See Rule 1.5(a); Feiger, Collison & Killmer v. Jones, 926 P.2d 1244, 1252-53 (Colo. 1996) (client's sophistication is relevant factor).

[16] "[A]n 'engagement retainer fee' is a fee paid, apart from any other compensation, to ensure that a lawyer will be available for the client if required. An engagement retainer must be distinguished from a lump-sum fee [*i.e.*, a flat fee] constituting the entire payment for a lawyer's service in a matter and from an advance payment from which fees will be subtracted (see § 38, Comment g). A fee is an engagement retainer only if the lawyer is to be additionally compensated for actual work, if any, performed." Restatement (Third) of the Law Governing Lawyers § 34 Comment e. An engagement retainer fee agreement must comply with Rule 1.5(a), (b), and (g), and should expressly include the amount of the engagement retainer fee, describe the service or benefit that justifies the lawyer's earning the engagement retainer fee, and state that the engagement retainer fee is earned upon receipt. As defined above, an engagement retainer fee will be earned upon receipt because the lawyer provides an immediate benefit to the client, such as forgoing other business opportunities by making the lawyer's services available for a given period of time to the exclusion of other clients or potential clients, or by giving priority to the client's work over other matters.

[17] Because an engagement retainer fee is earned at the time it is received, it must not be commingled with client property. However, it may be subject to refund to the client in the event of changed circumstances.

[18] It is unethical for a lawyer to fail to return unearned fees, to charge an excessive fee, or to characterize any lawyer's fee as nonrefundable. Lawyer's fees are always subject to refund if either excessive or unearned. If all or some portion of a lawyer's fee becomes subject to refund, then the amount to be refunded should be paid directly to the client if there is no further legal work to be performed or if the lawyer's employment is terminated. In the alternative, if there is an ongoing client-lawyer relationship and there is further work to be done, it may be deposited in the lawyer's trust account, to be withdrawn from the trust account as it is earned.

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Notes of Decisions (203)

Rules of Prof. Cond., Rule 1.5, CO ST RPC Rule 1.5
Current with amendments received through September 15, 2025.

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